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Adair Express L.L.C. and Package & General Utility Drivers, Local No. 396, International Brotherhood of Teamsters, AFL-CIO. Cases 31-CA-24291 and CA-31-CA-24484

September 26, 2002

## SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

The General Counsel seeks summary judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On September 21, 2001, the Board issued a Decision and Order<sup>1</sup> that, among other things, ordered the Respondent to make whole certain employees for loss of earnings and other benefits resulting from the Respondent's refusal to employ them in violation of Section 8(a)(1) and (3) of the Act. A controversy having arisen over the amount of backpay due Gary Bailey, Rolando Estrada, Gerardo Lachica, Jofre Macoy, Mario Rodriguez, Craig Smith, and Eddie Zamora, the Regional Director issued a compliance specification and notice of hearing on May 1, 2002, alleging the amounts due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated May 23, 2002, counsel for the General Counsel advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by May 29, 2002, summary judgment would be sought. The Respondent filed no answer.

On June 11, 2002, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On June 14, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response. The allegations in the motion and in the compliance specification are therefore undisputed. On June 20, 2002, the Charging Party filed a Joinder in Motion for Summary Judgment on this compliance specification.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due Gary Bailey, Rolando Estrada, Gerardo Lachica, Jofie Macoy, Mario Rodriguez, Craig Smith, and Eddie Zamora is as stated in the compliance specification and we will order payment by the Respondent of those amounts to the discriminatees, plus interest accrued on the amounts to the date of payment.<sup>2</sup>

## **ORDER**

The National Labor Relations Board orders that the Respondent, Adair Express L.L.C., Van Nuys, California, its officers, agents, successors, and assigns, shall make whole the individuals named below by paying them the amounts following their names, plus interest<sup>3</sup> and minus tax withholdings required by Federal and state laws:

Gary Bailey	\$ 4,906.55
Rolando Estrada	8,934.30
Gerardo Lachica	6,631.50
Jofre Macoy	22,186.25
Mario Rodriguez	7,083.47
Craig Smith	36,500.36
Eddie Zamora	11,418.00
Total Backpay	\$97,660.43

Dated, Washington, D.C. September 26, 2002

Wilma B. Liebman,	Member
William B. Cowen,	Member
Michael J. Bartlett,	Member

## (SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>2</sup> The compliance specification reserved for further litigation all backpay which may be due after December 31, 2001.

<sup>3</sup> Interest shall be computed as set forth in *New Horizons forthe Retarded*, 283 NLRB 1173 (1987).

<sup>&</sup>lt;sup>1</sup> 335 NLRB No. 96.